IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL NO. 52 OF 1990
With
FIRST APPEAL NO. 53 OF 1990
With
CIVIL APPLICATION NO. 11487 OF 2007
In CROSS OBJECTIONS NO. 111 OF 2007
With
CROSS OBJECTIONS NO. 111 OF 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge ?

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GUJARAT STATE ROAD TRANSPORT CORPORATION - Appellant(s)
Versus
HASMUKHBHAI ALIAS HARSHADBHAI PATEL & ORS. - Respondents

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Appearance :
Ms. Archana Patel with Mrs. Jyoti Mehta for Appellant(s) in F.A. Nos.52 and 53 of 1990.
Shri Nilesh A. Pandya for Respondent(s) : 1 in F.A. No.52 of 1990.
Shri Rajni H. Mehta for Respondent No. 5 in F.A. No.52 of 1990 and Cross Objection Nos.111 of 2007, and also for the applicant in C. A. No.11487 of 2007.
Shri Ashish Desai for Respondent Nos.1, 3 & 4 in F.A. No.53/1990.
None for other Respondents/opponents.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 06/09/2007

COMMON ORAL JUDGMENT

Being aggrieved by the award dated 21st January, 1989 passed by the learned Motor Accident Claims Tribunal (Main), Vadodara in M.A.C.P. Nos.335 of 1986 and 689 of 1986, the appellant - Gujarat State Road Transport Corporation has filed First Appeal Nos. 52 of 1990 and 53 of 1990. In First Appeal No.52 of 1990, the appellant has restricted its claim to the extent of Rs.1,00,000/-, while in First Appeal No.53 of 1990, the claim is restricted to the extent of Rs.40,000/- against the award of Rs.3,01,000/- and Rs.1,13,125/- respectively.

2. The Insurance Company has filed the Cross Objections with a submission that their liability could not exceed Rs.15,000/- and in any case, the learned Tribunal below was unjustified in holding the Insurance Company liable to the extent of the liability of the jeep driver and owner of the jeep.

3. The short facts necessary for disposal of the present appeals are that in a head-on collision between bus No. GRU-6911 and Jeep car No. GJU-8472, one Hasmukhbhai alias Harshadbhai Patel received number of injuries, while the driver of the jeep, namely, Balbirsingh - son

of Sodagarsingh died. Hasmukhbhai alias Harshadbhai Patel suffered grievous injuries, therefore, he filed M.A.C.P. No.335 of 1986, while the successors/dependents of Balbirsingh Sodagar Singh (driver) also filed the claim petition, M.A.C.P. No.689 of 1986.

3.1 The Gujarat Road Transport Corporation, after putting in their appearance, submitted that the driver of the jeep was absolutely negligent and as the driver of the S.T. bus was at all not negligent, they were not answerable to the claim made by either of the claimants. The Insurance Company, however, appeared and submitted that they were not answerable to the claim, but, if they are found liable, their liability would not exceed Rs.15,000/-.

3.2 The learned Tribunal below, after recording the evidence of the parties and after giving due opportunity of hearing to the parties, held that the claimant- Hasmukhbhai in M.A.C.P. No.335 of 1986 (First Appeal No.52 of 1990) was entitled to a sum of Rs.3,01,000/-. For the claimants in M.A.C.P. No.689 of 1986, it held that the dependents of the driver were entitled to a sum of Rs.2,26,500/-, but, in view of its findings that each of the drivers was negligent to the extent of 50%, it slashed the award to 50% and awarded a sum of Rs.1,13,125/- in favour of the claimants of M.A.C.P. No.689 of 1986 (First Appeal No.53 of 1990).

4. Before taking up the matter on merits, I would take up Civil Application No.11487 of 2007. The said application is an application seeking to produce additional evidence in the matter. The additional evidence, in fact, is a copy of the policy. In view of the admitted facts that the jeep was insured with the respondent-The Oriental Fire & General Insurance Company Limited, I find no difficulty in granting the said application and taking on record the insurance policy as additional evidence.

5. After taking me through the evidence, exhibits and discussions made by the learned Tribunal below, Ms. Archana Patel and Mrs. Jyoti Mehta, learned Counsel for the appellant-Corporation, submitted that in each of the cases, the learned Tribunal below erred in making the award on the higher side.

6. Shri Nilesh A. Pandya, learned Counsel for the respondent-claimant in First Appeal No.52 of 1990, submitted that looking to the nature of the injuries and their after effects, the claimant, in fact, was entitled to much more and the learned Tribunal below erred in awarding the less amount.

7. Shri Ashish Desai, learned Counsel for the respondents-claimants in First Appeal No.53 of 1990, submitted that the learned

Tribunal below, despite availability of the evidence on record that the future income of the deceased could be Rs.4,000/-, erred in holding that the income could safely be assessed at Rs.2,000/- and erred in deducting a sum of Rs.500/- towards personal expenses of the deceased. He submitted that the award is on the lower side.

8. Shri Rajni Mehta, learned Counsel for the Insurance Company, in support of the Cross Objections, submitted that in view of the Full Bench judgement of this Court in the matter of ***New India Assurance Co. Ltd. vs. Thakor Bhemaji Ganeshji & Ors***., [***(1993) 2 G.L.R. 1051***], the liability of the Insurance Company would not cross Rs.15,000/- . He submitted that to the said extent, the Cross Objections deserve to be allowed.

9. The learned Tribunal below has referred to the injuries suffered by Hasmukhbhai and it has observed as under:

> *"73) Dr. Arvindbhai Patel has been examined at Ex.65. He has stated that he works as an Ortho Surgeon and he had examined the applicant on 25-2-88. His say further is that he was treated by Dr. C.D. Patel because he was having a serious head injury. Dr. Arvindbhai Patel has stated that on examination he had noticed as under:*
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> > *1) Dinor fork deformity in the right wrist with painful and restricted movements of the wrist joint mainly supination and dorsi flexion by terminal 150*

degrees.

2) The hand grip was poor with non-coordination in the hands movement due to mental retardation.

3) Muscle wasting in the hand. It was markedly present.

4) Difficulty in lifting heavy weight.

5) The X-Ray of the right hand with the wrist joint showed an old mal-united colle's fracture with osteo-parasis in the bone.

74) Dr. Arvindbhai Patel has further stated that the radiological examination had shown as under:

1) Bonny tenderness on the right leg upper 1/3rd region with diffused bonny mass felt mainly on postero lateral aspect.

2) 10° extensor leg was present in the right knee joint.

3) Flexion was limited to terminal 20° on the right leg.

4) Difficulty in sitting cross-legged and squatting.

5) Difficulty in walking for a long distance.

6) The X-Ray of the right leg with knee joint showed an united fracture head, fibula with huge organise classified mass in the postero lateral aspect in the leg.

75) Dr. Arvind Patel has further stated that according to him, the injured applicant has incurred 40 per cent of the permanent partial disability of the body as a whole because of the fractures, etc. sustained by him.

76) Dr. Harkant Raval has been examined at Exh.67. He has stated that he works as a Consultant Psychiatrist at Vadodara and the case of the applicant was referred to him by Dr. Arvindbhai Patel. He has stated that he had noticed as under:

1) *Forgetfulness for recent events.*
2) *Gets irritated easily.*
3) *Slurred baby like speech, not able to understand.*
4) *Problem of eating has to be fed by others.*
5) *Cannot go alone to his own village.*
6) *Cannot count money or bring back the remaining money.*
7) *Passes urine in bed at night.*
8) *Recognises only near relatives.*

77) Dr. Harkant Raval has further stated that the mental state of the injured showed retardation in behaviour and he is able to follow only simple command and he is not in a position to tell as to how many sons he has got. His say further is that the speech of the injured is slurred and hesitant and he speaks small sentences like a baby.

78) He has further stated that his mood is vacant, dull and inappropriate and his thought process of hallucination cannot be assessed. His attention and concentration are poor and his memory is of short term. The tests carried out by him are indicative of organic brain damage. Dr. Harkant Raval has also stated that the applicant is not able to move alone and that he requires the help of the attendant and constant supervision. Lastly, he has stated that the applicant would not

be able to do any work."

From the aforesaid discussion made by the learned Tribunal below, it would clearly appear that the claimant-Hasmukhbhai has become a bundle of flesh and virtually is living dead. Though it was sought to be argued that the learned Tribunal below erred in awarding a sum of Rs.50,000/- under the head of pain, shock and suffering and further erred in awarding a sum of Rs.30,000/- towards the loss of future amenities, enjoyment and expectation of life, but, in the opinion of this Court, if the total amount of Rs.80,000/- is awarded under the head of pain, shock and suffering, etc., the said amount cannot be condemned as excessive. When a person suffers number of injuries, his legs and hands are broken, he becomes mentally retarded, he is unable to do his routine work, he is unable to answer the nature's call, he cannot feed his own self and becomes dependent upon others for rest of his life, then, the award of Rs.80,000/- under this head cannot be termed to be bad. The learned Tribunal below has also awarded a sum of Rs.1,20,000/- towards the loss of future income. Though it was sought to be contended that the agricultural land, on which certain operations were carried on by the claimant, is still available with the claimant and therefore, he was not to suffer future loss, but, this Court is of the opinion that if the claimant is taken to have earned a sum of Rs.30/- per day as agricultural labour, then, his income would not be less than Rs.10,000/- per year.

The learned Tribunal below also did not err in awarding a sum of Rs.1,20,000/- under the head of future loss of income.

10. It was sought to be contended that the claimant was not entitled to a sum of Rs.4,000/- per year towards the permanent assistance by certain servant or somebody else. In the opinion of this Court, when a person becomes a living dead and is unable to do anything, then, he would certainly require personal assistance by somebody, be he a member of the family or a servant. A sum of Rs.12/- per day towards charges of attendant cannot be termed to be bad.

11. The other amounts awarded by the learned Tribunal below cannot be held to be bad. The learned Tribunal below was certainly justified in awarding a sum of Rs.3,01,000/- to Hasmukhbhai – claimant in M.A.C.P. No.335 of 1986 (respondent in First Appeal No.52 of 1990). In this very appeal,

12. So far as the Cross Objections filed by the Insurance Company are concerned, on being asked, as to how the cross objections are maintainable against the co-respondents, that is, dependents of the driver and owner of the jeep (party respondents), Shri Mehta, placing reliance upon a judgement of the Supreme Court in the matter of ***Mahant Dhangir & Anr. vs. Shri Madan Mohan & Ors.***, [***AIR 1988 SC***

54], submitted that in exceptional circumstances, cross objections against the co-respondent are maintainable. In the said matter, in paragraph 12, the Supreme Court had observed as under:

> "*12. Generally, the cross-objection could be urged against the appellant. It is only by way of exception to this general rule that one respondent may urge objection as against the other respondent. The type of such exceptional cases are also very much limited. We may just think of one or two such cases. For instance, when the appeal by some of the parties cannot effectively be disposed of without opening of the matter as between the respondents inter se. Or in a case where the objections are common as against the appellant and co-respondent. The Court in such cases would entertain cross-objection against the co-respondent. The law in this regard has been laid down by this Court as far back in 1964 in Panna Lal v. State of Bombay, 1964 (1) SCR 980 at p. 991 : (AIR 1963 SC 1516 at p. 1520). After reviewing all the decisions of different High Courts, there this Court observed.*
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> *'In our opinion, the view that has now been accepted by all the High Courts that O. 41, R. 22 permits as a general rule, a respondent to prefer an objection directed only against the appellant and it is only in exceptional cases, such as where the relief sought against the appellant in such an objection is intermixed with the relief granted to the other respondents, so that the relief against the appellant cannot be granted without the question being reopened between the objecting respondent and other respondents, that an objection under O. 41, R. 22 can be directed against the other respondents is correct.*

> *Whatever may have been the position under the old S. 561 the use of the word "cross-objection" in O. 41, R. 22 expresses unmistakably the intention of the legislature that the objection has to be directed against the appellant. As Rajamannar, C. J. said in Venkateswarlu v. Ramamma, ILR (1950) Mad 874: (AIR 1950 Mad 379) (FB) : "The legislature by describing the objection which could be taken by the respondent as a 'cross-objection' must have deliberately adopted the view of the other High Courts. One cannot treat an objection by a respondent in which the appellant has no interest as a cross-objection. The appeal is by the appellant against a respondent, the cross-objection must be an objection by a respondent against the appellant." We think, with respect, that these observations put the matter clearly and correctly. That the legislature also wanted to give effect to the views held by the different High Courts that in exceptional cases as mentioned above an objection can be preferred by a respondent against co-respondent is indicated by the substitution of the word 'appellant' in the third paragraph by the words 'the party who may be affected by such objection'."*

The Supreme Court observed that if the appeal by some of the parties cannot effectively be disposed of without opening of the matter as between the respondents *inter se*, or in a case where the objections are common as against the appellant and co-respondent, the cross objections filed by the respondent against the co-respondent would be maintainable. In the present case, even without opening the entire issue, the Court can finally dismiss the appeal. Even otherwise, the cross

objections filed by the respondent-Insurance Company are not to claim or seek any relief against the present appellants. The Insurance Company is submitting that its liability would be Rs.15,000/- only and rest of the amount is required to be paid by the non-appealing respondents, namely, owner and successors of the jeep driver. Present is not a case where the cross objections can be held to be maintainable.

13. In relation to the amount awarded in favour of the dependents of Balbirsingh - son of Sodagarsingh, the learned Counsel for the appellant contended that the learned Tribunal was unjustified in holding that the monthly dependency was Rs.1,500/- or Rs.18,000/- per year. It was also submitted that the learned Tribunal below was unjustified in applying the multiplier of 12 (twelve). Smt. Gurpalkaur, widow of the deceased Balbirsingh - son of Sodagarsingh, had clearly stated that the monthly income of the deceased was Rs.2,000/- and in the near future, he was to earn a sum of Rs.4,000/-. Despite this, the learned Tribunal held that the monthly income could safely be assessed at Rs.1,500/- and the future prospects could take him to Rs.2,000/- only. In absence of cross objections by the dependents of Balbirsingh - son of Sodagarsingh, I am unable to find any fault with the findings recorded by the learned Tribunal below. The learned Tribunal below very justifiably held the dependency per month to be Rs.1,500/-. Looking to the age of the deceased, the application of the multiplier of 12 (twelve)

cannot be said to be on the higher side. Insofar as the question of award of compensation in each of the cases, is concerned, I am unable to interfere. At this stage, Ms. Patel and Mrs. Mehta, learned Counsel for the appellant, submitted that the learned Tribunal below was unjustified in awarding interest at the rate of 12% per annum when the trend is to award interest at the rate of 6% per annum.

14. Taking into consideration the totality of the circumstances, I hereby direct that each of the claimants would be entitled to interest at the rate of 6% per annum on the amount so awarded, from the date of the claim petition till date of the award made by the learned Tribunal below. From the date of the award till realisation, the claimants would be entitled to interest at the rate of 12% per annum on the balance amount which has not been paid or which has not been deposited by the appellant either with the Tribunal or the High Court.

15. In view of the discussion aforesaid, with the change of rate of interest from the date of the claim petition till the date of the award, both the appeals and Cross Objections are dismissed. Civil Application No.11487 of 2007 is also disposed of. However, there shall be no order as to costs.

[R.S.Garg, J.]

*kamlesh**